

A Collective Sigh of Relief: IRS Announces Revisions to Timelines for Due Diligence and Other Requirements under FATCA

Yesterday, in [Announcement 2012-42](#), the Internal Revenue Service (IRS) announced its intention to modify proposed regulations issued in February 2012 by the IRS and Treasury Department that implement a set of statutory rules commonly referred to as FATCA (the Foreign Account Tax Compliance Act). (For a discussion of the proposed regulations, please see an earlier Ropes & Gray [Alert](#).)

The announcement provides welcome relief under FATCA, including for foreign financial institutions (FFIs) and other withholding agents. In issuing the announcement, the IRS is responding to comments on the proposed regulations, notably those identifying practical issues with implementing the FATCA rules within the prescribed timeframes and seeking to expand the categories of “grandfathered obligations.”

Significantly, the announcement includes the following changes.

- It extends and coordinates the dates for FFIs and other withholding agents to complete FATCA diligence (see summary table at the end of the announcement) and delays certain reporting obligations.
- It delays by two additional years the requirement to withhold on gross proceeds (as described in the proposed regulations) by limiting withholding to gross proceeds from sales or other dispositions occurring after December 31, 2016.
- It adds the following new categories of “grandfathered obligations”:
 - obligations that could become subject to FATCA withholding solely as a result of any future final guidance treating them as generating (i) “foreign passthru payments” if the obligations are outstanding as of the date that is six months after the date such final guidance is issued or (ii) U.S.-source “dividend equivalent” payments under Internal Revenue Code Section 871(m) if the instruments are outstanding on the date that is six months after the date on which instruments of their type first become subject to such treatment; and
 - collateral obligations securing notional principal contracts that themselves are grandfathered obligations.

The IRS indicated that these changes will be reflected in the final regulations under FATCA, which are expected to be released by the end of the year.

For more information regarding the announcement or the FATCA rules more generally, please contact a member of Ropes & Gray’s [tax practice group](#) or your regular Ropes & Gray attorney.

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